

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | 63RD FLOOR
NEW YORK, NEW YORK 10118

1050 K STREET NW | SUITE 1040
WASHINGTON, DC 20001

TEL (212) 763-0883 | FAX (212) 564-0883

WWW.KAPLANHECKER.COM

DIRECT DIAL 212.763.0883
DIRECT EMAIL jquinn@kaplanhecker.com

March 10, 2023

BY ECF

The Honorable Lorna G. Schofield
United States District Court for the Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square
New York, New York 10007

Re: McKoy, et al. v. The Trump Corp., et al., No. 18 Civ. 9936 – Letter Motion to Seal

Dear Judge Schofield:

We write on behalf of Plaintiffs and the putative classes in the above-referenced action, pursuant to Rule I.D.3 of your Honor’s Individual Practices, to respectfully request provisional approval to file under seal: (1) an unredacted version of Plaintiffs’ Memorandum of Law in support of Plaintiffs’ Motion for Class Certification and (2) certain exhibits supporting Plaintiffs’ Motion.¹

Exhibits 3, 13, and 23 are excerpts of the Expert Reports of Michael Gartenberg, Stacie Bosley, and Kevin Lane Keller, which Plaintiffs designated as “Confidential” under Paragraph 3 of the operative Protective Order entered by the Court on September 10, 2019. *See* ECF 112. These reports reference, quote, and rely on various materials designated confidential by Defendants, ACN, and other non-parties, including revenue, marketing, and pricing information. *See Hypnotic Hats, Ltd. v. Wintermantel Enterprises, LLC*, 335 F. Supp. 3d 566, 600 (S.D.N.Y. 2018) (characterizing “marketing plans, revenue information, [and] pricing information” as “categories commonly sealed”).

Exhibits 1-2, 5-12, 14-22, and 24, and 26-37 are documents, videos, and/or deposition transcripts that have been designated as “Confidential” by Defendants; ACN; the Success-branded entities (the “Success Entities”); Metro-Goldwyn Mayer Studios, Inc. and JMBP, LLC (collectively, the “MGM Entities”); and/or Anne Archer Butcher. And Plaintiffs’ Memorandum of Law refers to and/or quotes from materials that have been designated as “Confidential” by Defendants, ACN, the Success Entities, the MGM Entities, and/or Anne Archer Butcher.

¹ In accordance with Rule I.D.3 of the Court’s Individual Practices, an unredacted copy of the Memorandum of Law, with redactions highlighted, will be filed under seal contemporaneously with this letter motion. *See* Standing Order, 19-mc-00583 (Dec. 19, 2019); Electronic Case Filing Rules & Instructions, Rule 6.8. Plaintiffs will timely serve the unredacted version on Defendants and will timely serve partially unredacted versions on the non-parties referenced in this letter.

Pursuant to the Protective Order, the party “with an interest in confidential treatment bears the burden of persuasion.” ECF 112 at 5. With respect to Exhibits 1-2, 4-12, 14-22, and 24-37, Defendants and the non-parties listed above, as the parties that made the relevant confidentiality designations, have the “interest in confidential treatment” of these materials. *Id.* Accordingly, on March 9, 2023, we notified counsel for these parties concerning our intent to file the Memorandum of Law and certain supporting exhibits under seal with material designated Confidential redacted in the publicly filed version of the Memorandum of Law.

For the avoidance of doubt, Plaintiffs take no position at this time concerning these parties’ confidentiality designations. Plaintiffs further respectfully reserve the right to challenge the relevant confidentiality designations in the future pursuant to Paragraph 15 of the Protective Order.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Quinn", is written over a horizontal line.

John C. Quinn

cc: Counsel of Record (via ECF)